1710.

SUPREME COURT OF THE UNITED STATES.

No. 155.

THE UNITED STATES, PLAINTIFFS,

vs.

EPHRAIM BRIGGS.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR MICHIGAN.

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Circuit court of the United States for the 7th circuit and district of Michigan. In the case of

THE UNITED STATES OF AMERICA
vs.
EPHRAIM BRIGGS.

Pleas before the judges of the circuit court of the United States for the seventh circuit and district of Michigan, at the district court room in the city of Detroit, in the district aforesaid, of the term of June, in the year of our Lord one thousand eight hundred and forty-seven.

DISTRICT OF MICHIGAN, *ss:*

The United States of America put in their place John Norvell, their attorney, to prosecute their complaint against Ephraim Briggs in the court aforesaid.

DISTRICT OF MICHIGAN, *ss:*

Ephraim Briggs, in his own proper person, at the suit of the said United States, upon the complaint aforesaid.

DISTRICT OF MICHIGAN, *ss:*

Be it remembered, that on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-six, the grand jury of the United States for the said district of Michigan came into the court aforesaid, before the judges thereof, at the district court room in the city of Detroit, and exhibited and filed in said court their bill of indictment against the said Ephraim Briggs, which said bill of indictment is in the words following, that is to say:

DISTRICT OF MICHIGAN, *ss:*

The grand jurors of the United States of America, empannelled and sworn to inquire in and for the body of the district of Michigan, upon their oath present, that Ephraim Briggs, late of the township of Huron, in the county of Wayne, in the district of Michigan aforesaid, with force and arms, &c., to wit, on the first day of April, in the year of our Lord one thousand eight hundred and forty-five, at township four south, of range nine east, in the county of Wayne, in the district of Michigan, and within the jurisdiction of this court, broke and entered a certain close of the United States there situate, to wit, a certain close of the United States called the Wyandott Reserve, and then and there a great number of trees, to wit, twenty white oak trees and twenty hickory trees, of the said United States, of great value, to wit, of the value of one hundred dollars, there then standing, growing, and being, did cut, fell, and prostrate, with intent the said trees then and there to use and employ in another manner than for the use of the navy of the United States, that is to say, with intent the said trees then and there to use and employ for his own use, against the form of the statute of the United

States in such case made and provided, and against their peace and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Ephraim Briggs, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty-five, at the township last aforesaid, in the county of Wayne aforesaid, in the district of Michigan, and within the jurisdiction of this court, with force and arms, &c., knowingly and wilfully, a great number of other trees, to wit, twenty white oak trees and twenty hickory trees, of the United States, of great value, to wit, of the value of one hundred dollars, there then standing, growing, and being on lands of the United States there situate, to wit, on lands of the United States called the Wyandott Reserve, did cut, fell, and prostrate, with intent the said last mentioned trees then and there to use and employ in another manner than for the use of the navy of the United States, that is to say, with intent the said last mentioned trees then and there to use and employ for his own use, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Ephraim Briggs, with force and arms, &c., to wit, on the first day of February, in the year of our Lord one thousand eight hundred and forty-five, at the township last aforesaid, in the county of Wayne aforesaid, in the district of Michigan, and within the jurisdiction of this court, on lands of the United States there situate, to wit, on certain lands of the United States called the Wyandott Reserve, a great number of other trees, to wit, twenty white oak trees and twenty hickory trees, of the said United States, of great value, to wit, of the value of one hundred dollars, there then being on said land, did cut, with intent the said last mentioned trees then and there to use and employ in another manner than for the use of the navy of the United States, that is to say, with intent the said last mentioned trees then and there to use and employ for his own use, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Ephraim Briggs, with force and arms, &c., to wit, on the first day of March, in the year of our Lord one thousand eight hundred and forty-five, at the township last aforesaid, in the county of Wayne aforesaid, in the district of Michigan, and within the jurisdiction of this court, a great number of other trees, to wit, twenty white oak trees and twenty hickory trees, of the United States, of great value, to wit, of the value of one hundred dollars, there then standing, growing, and being on lands of the United States there situate, to wit, on certain lands of the United States called the Wyandott Reserve, did aid and assist, and was employed in cutting, felling, and prostrating, with intent the said last mentioned trees then and there to use and employ in another manner than for the use of the navy of the United States, that is to say, with intent the said last mentioned trees then and there to use and employ for his own use, against the form of the statute of the

United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Ephraim Briggs, with force and arms, &c., to wit, on the fifteenth day of March, in the year one thousand eight hundred and forty-five, at the township last aforesaid, in the county of Wayne aforesaid, in the district of Michigan, and within the jurisdiction of this court, on lands of the United States there situate, to wit, on certain lands of the United States called the Wyandott Reserve, a great number of other trees, to wit, twenty white oak trees and twenty hickory trees of the United States, of great value, to wit, of the value of one hundred dollars, there then being on said lands, did aid and assist, and was employed in cutting, with intent the said last mentioned trees then and there to use and employ in another manner than for the use of the navy of the United States, that is to say, with intent the said last mentioned trees, then and there to use and employ for his own use, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Ephraim Briggs, with force and arms, &c., to wit, on the fifteenth day of February, in the year of our Lord one thousand eight hundred and forty-five, at the township last aforesaid, in the county of Wayne, in the district of Michigan, and within the jurisdiction of this court, a great number of other trees, to wit, twenty white oak trees and twenty hickory trees, of the United States, of great value, to wit, of the value of one hundred dollars, there then standing, growing, and being on lands of the United States called the Wyandott Reserve, did cut, fell, and prostrate, and cause and procure to be cut, felled, and prostrated, and did aid and assist, and was employed in cutting, felling, and prostrating, with intent the said last mentioned trees then and there to use and employ in another manner than for the use of the navy of the United States, that is to say, with intent the said last mentioned trees then and there to use and employ for his own use, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Ephraim Briggs, with force and arms, &c., to wit, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and forty-five, at the township last aforesaid, in the county of Wayne aforesaid, in the district of Michigan, and within the jurisdiction of this court, on lands of the United States there situate, to wit, on certain lands of the United States called the Wyandott Reserve, a great number of other trees, to wit, twenty white oak trees and twenty hickory trees, of the said United States, of great value, to wit, of the value of one hundred dollars, there then being on said lands, did cut, and cause to be cut, and did aid and assist, and was employed in cutting, with intent the said last mentioned trees then and there to use and employ in another manner than for the use of the navy of the

United States, that is to say, with intent the said last mentioned trees then and there to use and employ for his own use, against the form of the statute of the United States in such case made and provided, and against their peace and dignity.

Demurrer.

And the said Ephraim Briggs, in his own proper person, cometh into court here, and having heard the said indictment read, saith, that the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that the said Ephraim Briggs is not bound by the laws of the United States to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient indictment in this behalf, the said Ephraim Briggs prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment specified.

And the said Ephraim Briggs states and shows the following grounds of demurrer to the said indictment, viz:

First. Because the offence stated and set forth in the indictment is not an offence under the statute of the United States punishable criminally by indictment.

Second. Because, under the statute of the United States, trespass on the public lands of the United States is in no case an offence punishable criminally by indictment, but is either a mere trespass, punishable by action of trespass at common law, or by action of debt on the statute.

Third. For that the said indictment is, in other respects, informal, insufficient, and defective.

Joinder in demurrer.

And the said United States by John Norvell, their attorney, say, that the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law to compel the said Ephraim Briggs to answer the same; and the said United States, by their said attorney, are ready to verify and prove the same as the court here shall direct and award. Wherefore, inasmuch as the said Ephraim Briggs hath not answered to the said indictment, nor hitherto in any manner denied the same, the said United States pray judgment, and that the said Ephraim Briggs may be convicted of the premises in the said indictment specified.

And afterwards, to wit, on the twenty-ninth day of June, of the term of June, in the year of our Lord one thousand eight hundred and forty-seven, came the parties aforesaid into the court aforesaid, before the judges thereof, and thereupon said defendant pleaded that he was not guilty of the charges contained in said indictment in manner and form as he stands charged therein.

Therefore, let a jury be cal ed to inquire, &c., because, as well the United States as the said Ephraim Briggs have put themselves upon that jury.

And the jurors aforesaid, of whom mention is made, to wit: Peter E.

De Niell, Chauncy Morse, Gould Richardson, Peter J. Godfrey, Clement P. Johnson, William Purdy, James R. Corwin, John Belts, John W. Ross, Reuben B. Dimard, Henry Newberry, and Rodney D. Hill, being elected, tried, and sworn to try the issue joined in said cause, after hearing the evidence adduced, and receiving the charge of the court, say, they find defendant guilty in manner and form as he stands charged in said indictment.

And hereupon said defendant moves that the judgment on the verdict of guilty in this cause be arrested, and the verdict set aside, for the following reasons, viz:

First. Because the facts set forth in the indictment in this cause do not constitute a criminal offence, punishable by indictment, under the statutes of the United States.

Second. Because, under the statutes of the United States, trespass on the public lands, by cutting timber thereon, is in no case an offence punishable criminally by indictment, but is a mere civil trespass, and as such punishable only by action of trespass at common law, or debt on the statute.

Third. Because the said indictment does not aver, nor was there any evidence to shew, that the lands on which said timber was cut was reserved or set apart for naval purposes, according to the provisions of the statutes of the United States.

Fourth. Because there was no proof on the trial of the said cause that the timber cut consisted of live oak or red cedar trees, nor is there any averment in said indictment that any such trees were cut on the lands described in said indictment.

Fifth. Because said verdict is contrary to evidence and the charge of the court.

Division of opinion.

THE UNITED STATES OF AMERICA
vs.
EPHRAIM BRIGGS.

The motion of defendant in arrest of judgment, and for a new trial in the case, coming on to be heard, and the same having been argued by counsel on either side, the opinions of the court were opposed as to the point, "whether the offence charged and set forth in the indictment, of cutting, removing, or using, for any other than naval purposes, any trees or timber standing, growing, or being on any lands belonging to the United States, whether reserved for naval purposes or not, is, under the statutes of the United States, an indictable offence, and punishable by fine and imprisonment."

And it is ordered and directed, that this cause be certified to the Supreme Court of the United States on the indictment and trial, and the motion in arrest of judgment and for a new trial in the case, in pursuance of the act of Congress in such case made and provided.

Circuit court of the United States for the seventh circuit and district of Michigan, *ss:*

I, John Winder, clerk of said court, do certify, that the above and foregoing is a true exemplification of the record of the cause [SEAL.] of the United States of America against Ephraim Briggs, up to and including the point on which the said court were opposed in opinion, to wit: "Whether the offence charged and set forth in the indictment, of cutting, removing, or using, for any other than naval purposes, any trees or timber standing, growing, or being on any lands belonging to the United States, whether reserved for naval purposes or not, is, under the statutes of the United States, an indictable offence, and punishable by fine and imprisonment."

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court at the city of Detroit, this third day of November, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States of America the seventy-second.

JNO. WINDER, *Clerk*.

Filed 8th November, 1847.